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2.9 Faculty Rights and Responsibilities

Saint Mary's College of California

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FACULTY RIGHTS AND RESPONSIBILITIES

2.9 ACADEMIC FREEDOM AND RESPONSIBILITY

2.9.1 Saint Mary's College's ability to perform its Mission depends on the vigorous and unimpeded exercise of the Faculty's academic freedom. The common good of our Catholic, Lasallian, and Liberal Arts community depends on the free search for truth and its exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.

ACADEMIC FREEDOM

- a. All Saint Mary's faculty are entitled to full freedom in research and in the publication of the results, subject to adequate performance of their other academic duties.
- b. Faculty are entitled to freedom in the classroom in discussing their subject or area of professional expertise, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject or area of expertise. Faculty have a particular obligation to promote conditions of free inquiry, discussion, and expression.
- c. Saint Mary's College faculty are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they are free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they must remember that the public may judge their profession and their institution by their utterances. Hence they must at all times be accurate, exercise appropriate restraint, show respect for the opinions of others, and make every effort to indicate that they are not speaking for the institution.

(This statement is based on principles articulated in the following AAUP documents: "1940 Statement of Principles on Academic Freedom and Tenure," the 1940 and 1970 interpretive comments, the "Statement on Students' Rights and Freedoms," the "Statement

on Extramural Utterances,” the “Statement on Professors and Political Activity,” the “Statement on Professional Ethics, Section II.”)

2.9.2 POLICY ON PUBLIC PRESENTATIONS

2.9.2.1. Preamble

Saint Mary’s College of California is a Catholic institution of higher education in the Lasallian tradition where the liberal arts inform, enrich, and shape all areas of learning and where special importance is placed on fostering the intellectual skills, habits of mind, and activities which liberate persons to probe deeply the mystery of existence and live authentically in response to the truths they discover.

Our mission challenges us to pursue truth wherever it can be found, confident that between faith and reason there can be no fundamental conflict. While we place a high value on freedom of inquiry and discussion, and on the opportunity for intellectual stimulation, which can be the product of controversial content, with this freedom also comes fiduciary responsibility. The policy which follows outlines reasonable precautions for the scheduling of controversial events, which are designed to foster authentic dialogue and to protect the reputation of the *alma mater* we all cherish.

2.9.2.2. Policy

2.9.2.2.1. *Definitions*

- a. “Public presenter” means a person neither attending Saint Mary’s College nor otherwise employed by the College who is invited to make a public address or give a public performance.
- b. “Public” qualifies audiences composed in whole or part of persons neither attending nor employed by Saint Mary’s College.
- c. “Public” qualifies presentations, including performances or addresses, open to public audiences.
- d. The following guidelines do not apply to faculty members in the teaching of their classes. (see section 2.9.1 Academic Freedom subsection (b)).

2.9.2.2.2. *Considerations for Public Presentations*

- a. Public presentations must serve the mission of the College, as provided in the Preamble.
- b. All applicable procedures for contracting and scheduling, as provided in the Faculty, Staff or Student Handbook, must be followed.
- c. Public presentations must be ticketed, if seats are limited.
- d. Significant access for SMC students must be assured.
- e. If the presentation involves audience participation (e.g., a question period), SMC students must enjoy priority.
- f. Sponsors’ announcements or advertisements will declare that public presenters’ views are not necessarily those of Saint Mary’s College or the sponsoring collegiate entity.
- g. The Office of College Communications must approve announcements and advertisements.
- h. Sponsors will take reasonable steps to ensure that debate or discussion attending public presentations is conducted in a fashion worthy of a community of learning.
- i. It belongs to the exercise of that deliberate responsibility for the common good which is supposed in the Preamble that sponsors of foreseeably controversial presentations take counsel with the appropriate Dean or other supervisor, who may in turn seek the counsel of the Provost or President.

2.9.2.2.3. *Conditions under which the President may preclude, rescind or modify invitations to public presenters*

In extraordinary circumstances, the President may deny a requested invitation, reschedule or relocate the presentation, or rescind the invitation if in the President's judgment one of the following conditions apply:

- a. The presentation is egregiously contrary to the College's mission;
- b. The presentation presents an immediate and unmanageable risk to the physical safety of members of the College community or their guests; or
- c. The presenter(s) or his/her (their) agent's refusal to agree to the College's expressed policies or contracting terms presents an unacceptable risk to the College.

The President will explain to the Senate a decision to deny or withdraw an invitation.

2.9.3 INSTITUTIONAL POLICIES

Nondiscrimination Disclosure

In compliance with applicable law and its own policy, Saint Mary's College of California is committed to recruiting and retaining a diverse student and employee population and does not discriminate in its admission of students, hiring of employees, or in the provision of its employment benefits to its employees and its educational programs, activities, benefits and services to its students, including but not limited to scholarship and loan programs, on the basis of race, color, religion, national origin, ancestry, age, gender, sexual orientation, gender identity, marital status, medical condition or physical or mental disability.

2.9.3.1 Policy Prohibiting Discrimination, Harassment (including Sexual) and Retaliation

Non-Discrimination Policy

Saint Mary's College of California is committed to creating and maintaining a community in which all persons who participate in Saint Mary's programs and activities can work and learn together in an atmosphere free of all forms of discrimination, exploitation, intimidation, or harassment, including sexual, based on a legally protected characteristic or status. Every member of the Saint Mary's community should be aware that Saint Mary's will not tolerate harassment or discrimination on the basis of race, color, religion, national origin, ancestry, age, sex/gender, sexual orientation, gender identity, marital status, medical condition, or physical or mental disability, taking a protected leave (e.g., family, medical, or pregnancy leave), or on any other basis protected by applicable laws. Such behavior is prohibited both by law and by Saint Mary's policy. It is Saint Mary's intention to take whatever action may be needed to prevent, correct, and if necessary, discipline behavior which violates this policy, which may include suspension, termination, expulsion, or another sanction appropriate to the circumstances and violation. All members of the Saint Mary's community, including faculty, students, and staff are responsible for maintaining an environment that is free of sexual harassment and other forms of discrimination, harassment and retaliation as described in this Policy.

Title IX Information

Title IX prohibits discrimination on the basis of sex in any federally funded education program or activity. The U.S. Department of Education Office For Civil Rights provides guidelines to ensure that schools take effective steps to respond to sexual harassment and sexual violence in accordance with the requirements of Title IX.

Saint Mary's College Title IX Coordinator:
Eduardo Salaz, Associate Vice President of Human Resources
els3@stmarys-ca.edu
925-631-4212

Title IX Officer Deputy Coordinator:
Evette Castillo Clark, Dean of Students
ecc4@stmarys-ca.edu
925-631-4238

Definition of Sexual Harassment

1. Sexual harassment is a form of sex discrimination, which is illegal under both federal and state law. It can be verbal, visual, or physical. Although what constitutes sexual harassment will vary with the particular circumstances, it is defined as follows: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
 - a. submission to such conduct is made either explicitly or implicitly a term or condition of instruction, employment, or participation in a College activity, or
 - b. submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting that individual; or
 - c. such conduct has the effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile, or abusive working or learning environment.
2. Sexual harassment does not include verbal expression or written material that is relevant and appropriately related to course subject matter or curriculum, and nothing in this policy is intended to interfere with Saint Mary's educational mission or academic freedom, e.g., the ability of a teacher or student to examine examples of harassment appropriate to a particular subject.
3. A determination of whether particular conduct creates an intimidating, hostile or abusive work or learning environment is assessed from the point of view of a reasonable person in the complainant's position; such a determination also takes into account the totality of the circumstances, including, but not limited to, the following:
 - a. the frequency of the abusive conduct;
 - b. its seriousness;
 - c. whether it is physically threatening or humiliating;
 - d. the location of the conduct and the context in which it occurred;
 - e. the degree to which the conduct affected the education or employment environment; and,
 - f. the relationship between the parties.

Examples of Conduct which may be Sexual Harassment

1. Examples of verbal, physical or visual conduct which may be sexual harassment include, but are not limited to:
 - a. direct propositions of a sexual nature;

- b. sexual innuendoes and other seductive behavior, including subtle pressure for sexual activity such as repeated, unwanted requests for dates, and repeated inappropriate personal comments, staring, or touching;
 - c. direct or implied threats that submission to sexual advances will be a condition of employment, promotion, grades, etc.
 - d. conduct (not legitimately related to the subject matter of a course or curriculum, if one is involved) that has the effect of discomforting, humiliating or both, and that includes one or more of the following:
 - i. comments of a sexual nature, including sexually explicit statements, questions, jokes, anecdotes, or graphic material (e.g., visuals, such as screen savers, which are sexually explicit);
 - ii. unnecessary or unwanted touching, patting, massaging, hugging or brushing against a person's body or other conduct of a physical nature;
 - iii. remarks of a sexual nature about a person's clothing or body;
 - iv. insulting sounds or gestures, whistles, or catcalls;
 - v. invading someone's personal space or blocking her/his path;
 - vi. unwelcome and inappropriate letters, telephone calls, electronic mail, or other communications;
 - vii. displaying sexually suggestive objects, pictures, cartoons or posters (e.g. screen savers).
 - e. a consensual romantic or sexual relationship which
 - i. causes adverse treatment of third parties, or
 - ii. creates a hostile or intimidating working or learning environment for third parties;
 - f. stalking (which is also criminal behavior).
 - g. sexual assault (which is also criminal behavior).
2. Some conduct that may appear to be consensual may also be unacceptable.
 3. Sex/gender-based discrimination, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on a person's gender or gender-based characteristics, but not involving conduct of a sexual nature (e.g., the repeated sabotaging of female students' laboratory experiments by male students in the class) may be a form of sex discrimination prohibited by law. While sex/gender-based discrimination may be distinguished from sexual harassment, acts of sex/gender-based discrimination may contribute to the creation of a hostile work or academic environment. Thus, a determination of whether a hostile environment due to sexual harassment exists may take into account acts of sex/gender-based discrimination.
 4. Not all sexual harassment occurs between persons of differing power. Sexual harassment may also occur between peers. In addition, while the majority of reported cases of sexual harassment involve a male harassing a female, sexual harassment may also involve a female harassing a male, or an individual harassing a person of the same gender.

NOTE: Nothing in this Policy should be construed to prevent faculty members from rigorously challenging fundamental beliefs held by students and society. However, faculty members may not interject into the academic setting sexual material that is unrelated to any legitimate educational objective or allow the educational setting to be so sexually charged that Saint Mary's students are prevented from effectively participating in the academic environment.

Threats or other forms of intimidation and/or retaliation against a student or employee for bringing a complaint of alleged discrimination, harassment (including sexual or sexual assault) or of any other violations of College policies, including but not limited to the Student Code of Conduct, are prohibited. This prohibition includes threats or other forms of intimidation and/or retaliation against the family or friends of a student or employee who brings a complaint under this policy, or those who assist a student or employee in bringing a complaint, or those who participate in an investigation and/or student discipline process for an alleged violation of the Student Code or other College policy.

Retaliation is a violation of College policy and may also be a violation of the law. An allegation of retaliation constitutes an independent basis for investigation and imposition of sanctions on the retaliating student or employee if determined to have occurred. All conduct that is believed to constitute retaliation should be reported immediately to the Castillo Clark, Dean of Students (Title IX Deputy Coordinator) - when the individual alleged to have engaged in retaliation is a student or student visitor- or to Eduardo Salaz, Associate Vice President of Human Resources (Title IX Coordinator) -when the individual alleged to have engaged in retaliation is an employee (faculty and staff) or visitor to the College (e.g., contractors, vendors, or non-student guests).

The reporting procedures described below also apply to allegations of retaliation. Interim protections mean steps the College takes to reasonably protect employees and students during an investigation and/or student discipline process.

2.9.3.1.2 Complaint and Reporting Procedures and Resources for Addressing Incidents of Discrimination, Harassment, Including Sexual, and Retaliation (Title IX – Sexual Assault Reporting Process)

Saint Mary's has in place internal procedures to investigate and address complaints of discrimination, harassment (including sexual), and retaliation as described in this Policy. These procedures are intended to assure fairness and to maintain confidentiality in the process of responding to complaints.

Complaints of discrimination, harassment, including sexual harassment or sexual assault, and/or retaliation involving students or student visitors should be reported promptly to:

Title IX Officer Deputy Coordinator:
Evette Castillo Clark, Dean of Students
ecc4@stmarys-ca.edu 925-631-4238

In the case of an emergency, contact:
Public Safety Department: 925-631-4282
(If you dial 9-1-1 for an emergency, only use a landline for a local response.)

Complaints of discrimination, harassment, including sexual harassment or sexual assault, and/or retaliation that involve employees (faculty and staff) or visitors to the College (e.g., contractors, vendors, volunteers or non-student guests) should be reported promptly to:

Saint Mary's College Title IX Coordinator or designee:
Eduardo Salaz, Associate Vice President of Human Resources
els3@stmarys-ca.edu 925-631-4212

In the case of an emergency, contact:
Public Safety Department: 925-631-4282

(If you dial 9-1-1 for an emergency, only use a landline for a local response.)

The Associate Vice President of Human Resources is responsible for overseeing Saint Mary's compliance with this Policy and will determine the appropriate next step for investigation and resolution. All members of the Saint Mary's community must cooperate fully with the Title IX Coordinator and Title IX Deputy in the fulfillment of her/his responsibilities.

Reports shall be brought as soon as possible after the alleged conduct occurs, optimally within one year. Prompt reporting will enable the College to investigate the facts, determine the issues, and provide an appropriate remedy or disciplinary action. The College shall respond to reports of sexual harassment brought after one year to the greatest extent possible, taking into account the amount of time that has passed since the alleged conduct occurred. Once reported, the Associate Vice President of Human Resources as Title IX Coordinator and/or his/her designees will provide prompt and equitable resolution.

In addition, individuals who believe they have experienced discrimination, harassment, including sexual harassment or sexual assault, based on the protected characteristics listed above and/or retaliation are free to contact the Equal Employment Opportunity Commission and/or the California Department of Fair Employment and Housing to pursue external legal remedies.

Investigation and Corrective Action

The College will investigate every reported complaint of unlawful discrimination or harassment. The investigation will be conducted in a thorough, prompt and professional manner.

If the conclusion of the investigation is that unlawful discrimination or harassment occurred, the College will initiate corrective action, as appropriate under the circumstances. For employees, the corrective action may range from verbal warnings up to and including termination from employment. For students, the corrective action will be imposed in a manner consistent with the College's Student Code or other applicable procedures. If the individual found to have engaged in the unlawful discrimination or harassment is not an employee or student of the College, corrective action within the reasonable control of the College, and as appropriate under the circumstances, will be initiated.

If termination of a faculty member is contemplated, the applicable rules governing dismissal for unfitness will be followed.

The employee or student who raised the complaint will be advised of the results of the investigation, unless doing so is prohibited by FERPA or other applicable law. Similarly, an employee or student who is accused of the unlawful discrimination or harassment will be advised of the results of the investigation.

Intentionally False Reporting

Discriminatory activity and harassment, and particularly sexual harassment or assault, often is not witnessed by others, and reports of such activity cannot always be substantiated by additional evidence. Lack of any such additional evidence should not discourage an individual from reporting any incident in violation of this policy. However, individuals who

make reports that are later found to have been intentionally false or made maliciously, without regard for truth, may be subject to disciplinary proceedings.

Confidentiality

When sexual harassment or assault has been reported, the College will make every effort to preserve the complainant's privacy and protect the confidentiality of his or her information. The degree to which confidentiality can be protected, however, will often depend upon the professional role of the person being consulted. For example, the Dean of Students may need to inform other individuals to protect their safety or rights, in fairness to the persons involved, or in response to an investigation. In addition, the College is required by law to report to the police certain information about incidents occurring on campus. Such reports are for statistical purposes only and do not include individual identities. Finally, faculty are considered responsible employees who have a duty to report. Faculty cannot serve as confidential resources.

Confidential Resources

Confidential resources provide members of the College community with a safe place to discuss their concerns and learn about the procedures and potential outcomes involved. Local confidential resources include

- Coordinator of Sexual Assault Awareness, Outreach and Education, Gillian Cutshaw ([925-631-4193](tel:925-631-4193))
- Therapists at the Counseling and Psychological Services ([925-631-4364](tel:925-631-4364))
- Priests consulted under the protection of the priest-penitent privilege
- Professional staff at the Health and Wellness Center (925-631-4254)

Reports to these resources do not serve as notice to the College to initiate an investigation to address the alleged sexual harassment.

Campus Resources

- SMC Sexual Assault Crisis Response Team: 925-878-9207
- Campus Assault Resources & Empowerment (CARE): 925-631-4193
- Advocacy, support, information, and resource referral (Mitty Hall, Ground Floor)
- Dean of Students (Title IX Deputy): 925-631-4238
- Information about the discipline process & list of advisors (Ferroggiaro Hall 200)
- Public Safety Department: Emergency: 9-1-1 OR 925-631-4282
- General Information/Administration: 925-631-4052
- Counseling Center: 925-631-4364
- Confidential Counseling services, support and information (Augustine Hall, Ground Floor)
- Health and Wellness Center: 925-631-4254
- Medical and information resource (Augustine Hall, Ground Floor)
- Title IX Coordinator: 925-631-4212
- Coordinator of Community Life: 925-631-4238

Community Resources

- Contra Costa County Crisis & Suicide Intervention: 800-833-2900 (24 hour Hotline)
- Community Violence Solutions: 800-670-7273 (Contra Costa Rape Crisis 24-Hour Hotline)
- Employee Assistance Program:
- Mental Health Network (MHN): 800-977-7585 members.mhn.com (company code: smceap)

- National Sexual Assault Hotline: 800-656-HOPE (4673)
- Rape, Abuse & Incest National Network: www.RAINN.org
- STAND! Against Domestic Violence: 888-215-5555 (24-hour crisis counseling and emergency resource)
- Moraga Police Department (24-hour number): 925-284-5010

2.9.3.1.3 Sexual Harassment Prevention/Non-Discrimination Seminars or other training

Saint Mary's offers training during each academic year covering sexual and other forms of illegal harassment and discrimination. Throughout each academic year, students have the opportunity to attend programs regarding discrimination and sexual harassment, including sexual assault. All employees must complete on-line harassment prevention training at least once every two academic years. (An academic year is defined as July 1 to June 30.) Employees who are on an approved and/or legally mandated leave during the academic year are not required to fulfill this requirement while on that leave, but will be expected to do so in the next academic year following their return from such leave.

Except for those faculty and staff described above, failure of a tenure-track or tenured faculty or staff member to attend an on-site College-sponsored sexual harassment seminar during each academic year, when offered, as evidenced by the absence of a record of attendance at such seminar, may result in the Board of Trustees declining to indemnify (i.e., pay any judgment against or settlement on behalf of the individual), to the extent permitted by law, the faculty or staff member should a claim for discrimination, including but not limited to sexual harassment, or retaliation be brought against that faculty or staff member.

Except for those faculty and staff as described above, failure of a contingent faculty member to attend an on-site College-sponsored sexual harassment seminar during each academic year, when offered, as evidenced by the absence of a record of attendance at such seminar, may result in the Board of Trustees declining to indemnify (i.e., pay any judgment entered against or settlement on behalf of the individual), to the extent permitted by law, the faculty member should a claim for discrimination, including but not limited to sexual harassment, or retaliation be brought against that faculty member, as well as precluding that non-ranked faculty member from being considered for or offered another faculty appointment at the College.

2.9.3.1.4 Sanctions

Employees who engage in conduct in violation of this policy are acting outside the scope of their employment responsibilities and, in addition to discipline up to and including termination of their employment, may be subject to individual legal liability and damages for their actions.

2.9.3.2 Amorous Relationships Policy

Definition of Amorous Relationships

Amorous relationships are those romantic or sexual relationships to which both parties appear to have freely consented. When such a relationship involves a power differential between two members of the College community, it is of concern to the College, and such relationships should be avoided due to:

1. The potential conflict of interest that arises when an individual supervises, evaluates, coordinates, directs, advises, hires, terminates, instructs, promotes, or grants pay raises

or other benefits to another person, or provides professional services (e.g., counseling) to another individual with whom that person has an amorous relationship.

2. The potential for unintended consequences that results because these types of relationships may develop or exist solely as a result of the power differential, which may or may not involve sexual harassment as proscribed by the College's policy prohibiting sexual harassment (see section 2.9.3.1 Policy Prohibiting Discrimination, Harassment (including Sexual) and Retaliation).

2.9.3.2.1 Policy

The College discourages amorous relationships where there is a power differential between the parties or where the potential exists for such a power differential in the foreseeable future. Three examples of relationships involving power differentials are:

1. That between teacher and student (including, e.g., those involved in formal instruction, advising and tutoring);
2. That between employee and supervisor;
3. That between the provider and recipient of educationally-related College or College-related services (including those involved in counseling, student services such as registration and financial aid, and athletic coaching).

This list is not all-inclusive.

Of special concern to the College are amorous relationships initiated between a faculty member and a student while the former is instructing, advising or mentoring the latter. Such circumstances pose extraordinary risks of compromising or appearing to compromise the College's central mission and of breaching the faculty's commitment to the welfare of its students. Hence, the College expects faculty members to refrain from initiating or participating in such a relationship.

2.9.3.2.2 Procedures

If an amorous relationship exists or develops between individuals having a power differential within the College, the person with greater power shall report it to an appropriate supervisor or to the Associate Vice President of Human Resources. The supervisor or the Assistant Vice President shall make suitable arrangements:

1. To ensure the objective evaluation of that person's performance and
2. To protect affected individuals and the integrity of the College's functioning.

Confidentiality is to be maintained in this process.

2.9.3.2.3 Other Considerations

1. Employees engaged in conduct of the type described in this policy may also violate the College's policy prohibiting sexual harassment.
2. In addition, all teachers, supervisors, and other employees should understand that there are substantial risks even in consenting amorous relationships where a power differential exists. Even if the conflict of interest issues are resolved, charges of sexual harassment may develop. A teacher's or supervisor's protection under applicable law and representation by counsel retained by the College at the College's expense may not apply because such relationships may be outside the scope of one's employment.

Furthermore, in administrative actions or lawsuits resulting from allegations of sexual harassment, consent may be very difficult to establish where a power differential exists. Even relationships in which there is not direct power differential may cause difficulties because faculty or staff engaged in such a relationship may, in the future, be placed in a position of responsibility for the student's or employee's instruction or evaluation.

2.9.3.2.4 Sanctions

The procedures for investigating alleged violations of the College's Amorous Relationship Policy and the sanctions for violations of this policy are the same as the procedures and sanctions for violations of the College's Non-Discrimination (Sexual Harassment) and Retaliation Policies.

2.9.3.3 Family Educational Rights and Privacy Act of 1974

FERPA stands for the "Family Education Rights and Privacy Act of 1974." You might also hear it referred to as the "Buckley Amendment." This law protects the privacy of student education records. FERPA applies to all schools that received funds through an applicable program of the U.S. Department of Education, and thus most colleges and universities are covered by FERPA.

FERPA defines the phrase "education record" broadly as "those records, files, documents, and other materials which 1) contain information directly related to a student; and 2) are maintained by an educational institution."

FERPA requires that education records be kept confidential. Records may be disclosed with the consent of the student, if the disclosure meets one of the statutory exemptions, or if the disclosure is directory information and the student has not placed a hold on the release of directory information.

FERPA gives students the following rights:

- A. *The right to inspect and review the student's education records:* Students may review education records directly concerning the student within forty-five (45) days of the day the College receives a request for access. Students interested in reviewing their education records must submit their requests to the Office of the Registrar, which is authorized to review each request and to approve proper requests. The Registrar will make arrangements for access and will notify students of the time and place where the records may be inspected. Though students have the right to review their records, the College does not provide copies of the records. In the event that a particular circumstance prevents a student from coming to the College to inspect and review his/her records, the College will work with the student to make an alternate arrangement consistent with FERPA. Education records maintained by the College but provided to the College by third parties, which may include but is not limited to high school transcripts, letters of recommendation and test scores, will not be re-disclosed by the College to the students.

There are certain records which students are not entitled to review, including, (i) financial records of parents; (ii) confidential letters and recommendations relating to admissions, employment and honors, for which a waiver of the right of access has been signed by the student, provided that upon request the student is given the names of those persons writing letters; (iii) a physician's or psychologist's records (a student may, however, provide the College with written authorization to have his or her own

physician or other appropriate professional review the records); and (iv) records of personnel of the College which are “sole possession records” (e.g. memory aids or reference tools/notes used by the maker thereof and are not made accessible to or revealed to other persons). In addition, where a record contains information that concerns more than one student, a student requesting inspection will be informed about the information only insofar as it pertains to that student.

- B. *The right to request amendment of education records:* Students may ask the College to amend a record that the student believes is inaccurate. The student should write the College official responsible for the record, clearly identify the part of the record he or she believes to be inaccurate, and specify why it is believed to be inaccurate. Students also have the right to insert in their records written explanations concerning the content of the records if a request to make a change has been denied (see below). Please note that FERPA does not give any student the right to contest a grade given in a course, but does give the student the right to seek to correct an improperly recorded grade. If the College decides not to amend the record as requested by the student, the College will notify the student of the decision and advise the student of his or her right to a hearing regarding the request for amendment. A representative from the office of Academic Affairs has been designated as the hearing officer. Additional information regarding the hearing procedures will be provided to the student when notified of the right to a hearing.
- C. *The right to consent to disclosures of personally identifiable information:* Personally identifiable information contained in the student’s education records may not be disclosed without the student’s consent, except to the extent that FERPA authorizes disclosure without consent. One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility. A school official is a person employed by the College in an administrative, supervisory, academic or research, or support staff position (including public safety personnel and health staff); a person or company with whom the College has contracted (such as an attorney, auditor, or collection agent); a person serving on the Board of Trustees; or a student serving on an official committee, such as a discipline or grievance committee, or assisting another school official in performing his or her tasks. In addition, the College may, but is not required to, disclose personally identifiable information from an education record of a student without consent if the disclosure meets one or more of the following conditions:
1. The disclosure to officials of other universities in which a student seeks enrollment, provided that the student is given notice of the disclosure, is provided with a copy of the records disclosed (if so requested by the student), and is given the opportunity to review and challenge the records sought. College policy is to forward only Saint Mary’s College transcripts and only upon a student’s written request.
 2. The disclosure is to an authorized representative of the Comptroller General of the United States or to certain federal, state and local educational authorities.
 3. The disclosure is in connection with financial aid for which the student has applied or which the student has received.
 4. The disclosure is to State and local officials or authorities under applicable state laws concerning the juvenile justice system.
 5. The disclosure is to organizations conducting studies, provided that the study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization and the

information is destroyed when no longer needed for the purposes for which the study was conducted.

6. The disclosure is to accrediting organizations to carry out their accrediting functions.
 7. The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.
 8. The disclosure is to comply with a judicial order or lawfully issued subpoena and the College has made a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.
 9. The disclosure is in connection with a health or safety emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals.
 10. The disclosure is information the educational agency or institution has designated as "directory information" (see below).
- D. *Disclosures pursuant to student consent.* If the information request does not fit into one of the categories described above, you must obtain the student's consent prior to disclosing the records. The consent must be in writing, signed by the student, and dated, and must specify the records to be released, the purpose of the disclosure, and the party or class of parties to whom the disclosure may be made.

The purpose of the consent form is to permit the student to have some control over the disclosure of personally identifiable information in his or her education records. The fact that a student signs a consent form, whether specific or "blanket," does not, however, bind the College to make the student's records available to the third party or parties who have obtained the student's consent to their review of his or her files. The student's records are still the property of the College and, even if a consent has been signed, the College will exercise its discretion in each case by disclosing to the third party only such information, records, and files, if any, as the College deems appropriate in light of the reason that the third party is seeking access to the student's records (e.g., background checks). The signed consent must be provided to the College by the third party at the time the request for access is made. The College will retain the provided copy of the consent. Records to which students are denied access because they are not "education records" usually will not be made available to an outside party.

FERPA imposes limitations on re-disclosure by the recipients of education records. A third party generally will not be permitted to make copies of records to which he or she is granted access, even if the consent signed by the student explicitly gives permission for such copies to be made. Additionally, if a student has provided a third party with authorization to conduct a background investigation for employment related purposes, the College may release unofficial copies of transcripts and/or general information about the following areas of student involvement: on-campus employment, resident housing, encounters with the campus Department of Public Safety and encounters with the Student Conduct Office, in conformance with the authorization.

- E. *The right to file a complaint with the U.S. Department of Education:* A student may file a complaint concerning an educational institution's alleged failure to comply with the requirements of FERPA. The name and address of the office that administers FERPA is: *Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue S.W., Washington, DC 20202-4605.*

Directory Information

Material classified as “directory” information can be released without student consent. Directory information, as defined by the College, includes the following: the student’s name, date/place of birth, photographs, periods of enrollment, degrees, awards and honors received, major fields, campus or home address, e-mail address, student class schedules, telephone numbers, height/weight of student athletes and the most recent previous educational institution attended by the student. A student may, however, have all of the information withheld upon written notice to the Office of the Registrar given within ten days after the beginning of each semester.

USA Patriot Act and FERPA

This Act permits designated federal officials to apply for a court order to obtain copies of student records relevant to an investigation of terrorism or other crimes, without notifying the student. All requests for such information should be referred to the Office of General Counsel.

2.9.3.4 The Clery Act and Campus Sex Crimes Prevention Act Notices

Notification with regard to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1998, and the Campus Sex Crimes Prevention Act.

As provided by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1998, Saint Mary’s College of California through its Department of Public Safety, annually provides notice and makes available copies of the Annual Security Report, to the campus community, prospective students, employees and the public. Each Security Report includes statistics for the past three years concerning crimes and incidents (whether they occurred on campus, in off-campus building and property owned or controlled by the College, or on public property adjacent to campus) reported to campus security authorities. Each Security Report also provides campus policies and practices concerning security – how to report sexual assaults and other crimes, crime prevention efforts, policies/laws governing alcohol and drugs, victims’ assistance programs, student discipline, college resources, and other matters.

The Security Report is available in the following ways:

- electronically: <http://www.stmarys-ca.edu/2013-security-and-fire-safety-report-and-college-safety-information>
- in person: Department of Public Safety, Administrative Office, Assumption Hall;
- or by Mail or Telephone Request:
Department of Public Safety, P.O. Box 3111, Moraga, CA 94575-3111,
(925) 631-4052.

In addition, as provided by the Campus Sex Crimes Prevention Act, the Contra Costa County Sheriff’s Office maintains a Megan’s Law database of sex crime offenders, which information may be obtained from the Sheriff’s office located at 500 Court Street, Martinez, Monday-Friday, 9 am to 4 pm.

2.9.3.5 Whistleblower Policy: Fraudulent or Dishonest Conduct

Saint Mary’s College of California, reflecting its Lasallian and Catholic values, expects that its employees and students will act in a manner that is consistent with those values in their use of College resources and property, including but not limited to financial resources of any kind, whether donor funds, College revenue, endowment income, State or Federal grants or other aid (all property and resources are collectively referred herein as "College

Resources". To protect the integrity of Saint Mary's learning community and to ensure the highest standards of conduct by and among members of that community, the College will investigate any possible fraudulent or dishonest use or misuse of College resources or property by faculty, staff, or students. Anyone found to have engaged in fraudulent or dishonest conduct is subject to disciplinary action by the College up to and including dismissal or expulsion, and civil or criminal prosecution when warranted. All members of the College community are encouraged to report possible fraudulent or dishonest conduct, including but not limited to misuse of College Resources. An employee should report his or her concerns to a supervisor, department chair or program director. If for any reason an employee finds it difficult to report his or her concern to a supervisor or department or program chair, the employee can report it directly to the area Vice President, Vice Provost or Dean of the faculty member's school. Students should report any concerns to the Director of Student Community Life. Those receiving reports of suspected fraudulent or dishonest conduct involving employees are required to report such conduct to the Associate Vice President of Human Resources; in the case of students, those receiving such reports (e.g., the Associate Dean of Students) are required to report such conduct to the Vice Provost for Student Life.

Definitions

Whistleblower: An employee or student who informs one or more of the individuals identified in the policy statement above about an activity that the employee or student believes to be fraudulent or dishonest.

Baseless Allegations: allegations made with reckless disregard for their truth or falsity. Individuals making such allegations may be subject to the appropriate College disciplinary action and/or legal claims by the individuals accused of such conduct.

Fraudulent or Dishonest Conduct: a deliberate act or failure to act with the intention of obtaining an unauthorized benefit. Examples of such conduct include, but are not limited to:

- forgery or alteration of documents;
- unauthorized alteration or manipulation of computer files;
- fraudulent financial reporting;
- pursuit of a benefit or advantage that would create a conflict of interest with one's responsibilities or obligations as a member of the College community;
- misappropriation or misuse of College resources, such as funds, supplies, or other assets or property;
- authorizing or receiving compensation for goods not received or services not performed;
- authorizing or receiving compensation for hours not worked.

2.9.3.5.1 Whistleblower Protections

The College will use best efforts to protect whistleblowers against retaliation, as described below. The College cannot guarantee confidentiality, however, and there is no such thing as an "unofficial," "informal," or "off the record" report. The party to whom such conduct is reported, will keep the whistleblower's identity confidential, unless:

1. the whistleblower(s) agrees to be identified;

2. identification is necessary to allow the College or law enforcement officials to investigate or respond effectively to the report;
3. identification is required by law; or,
4. the individual accused of violations of this policy is entitled to the information as a matter of procedural and/or legal right in disciplinary actions.

College employees and students may not retaliate against a whistleblower with the intent or effect of adversely affecting the terms or conditions of employment or enrollment (including, but not limited to, threats of physical harm, loss of job, punitive work assignments, or impact on salary or wages, or the access to educational benefits).

Whistleblowers who believe they have been retaliated against may file a written complaint with the Associate Vice President of Human Resources, if an employee is involved, or with the Dean of Students, if a student is involved. This protection from retaliation is not intended to prohibit the individuals identified above (for receiving such reports of improper conduct) from taking action, including disciplinary action, in the usual scope of their duties and responsibilities that are based on valid employment- or student-related factors.

Whistleblowers must be cautious to avoid baseless allegations (as described earlier in this policy).

2.9.3.5.2 Whistleblower Procedures

The Associate Vice President of Human Resources, or her/his designee, shall conduct or direct the investigations of all suspected fraudulent or dishonest conduct with such College officials as may be necessary or appropriate at the discretion of the Vice President for Finance and Administration.

In the case of suspected student conduct reported under this policy, the Dean of Students or his/her designee either investigates the suspected conduct or may refer the investigation of such suspected conduct to the College's Disciplinary Hearing Board (DHB), consistent with policies and procedures in place to investigate allegations of violations of student conduct policies.

Cases involving possible violation of criminal law will be investigated in cooperation with the Director of Public Safety or his/her designee.

If the facts reported could be a violation of this policy, the Associate Vice President of Human Resources or her/his designee or, in the case of students, the Dean of Students, will provide the individual making the accusation with a copy of this policy and review its terms.

If the Associate Vice President of Human Resources or her/his designee or, in the case of students, the Dean of Students or the DHB, determines that fraudulent or dishonest conduct occurred, the appropriate College disciplinary steps will be invoked consistent with applicable College policies.

If it is determined that a violation of this policy has not occurred, the Associate Vice President of Human Resources or the Dean of Students will explain to the person who has reported the concern or conduct the reason for the determination and advise the person of other available reporting channels, both administrative (to appropriate government agencies) and criminal (to appropriate law enforcement agencies). Consistent with applicable state and federal laws, the College posts in Filippi Hall, near the Human

Resources Department, additional reporting procedures and Whistleblower information for reporting violations of state or federal statutes or regulations to applicable government or law enforcement agencies, as well as information regarding retaliation by the College for making such disclosures.